

Agency for International Development

§ 212.41

(e) *Notice of intent to disclose.* (1) The Agency shall give careful consideration to objections made by a submitter pursuant to paragraph (d) of this section prior to making any administrative determination of the issue. Whenever the Agency decides to disclose information despite the objection of a submitter, the Agency shall forward to the submitter a written notice which shall include:

(i) A statement of the reasons for which a submitter's disclosure objections were not sustained; and

(ii) A description of the information to be disclosed.

(2) To the extent permitted by law, the notice required to be given by paragraph (e)(1) of this section shall be provided to the submitter a reasonable number of days prior to the specific disclosure date.

(3) Whenever the Agency provides notice to the submitter in accordance with paragraphs (e) (1) and (2) of this section, the Agency shall at the same time notify the requester

(i) That such a notice has been given and

(ii) Of the proposed date for disclosure.

(f) *Notice of lawsuit.* When a requester brings suit seeking to compel the disclosure of information for which notice is required pursuant to paragraph (c) of this section, the Agency shall promptly notify the submitter that such suit has been filed.

(g) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

(1) The Agency determines that the information should not be disclosed;

(2) The information has been published or has been officially made available to the public;

(3) Disclosure of the information is required by an Agency rule that;

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the Agency that are to be released under the FOIA; and

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information

could reasonably be expected to cause substantial competitive harm;

(4) For purposes of paragraph (c) of this section, the information requested was not designated by the submitter as exempt from disclosure when the submitter had an opportunity to make such designation at the time of submission of the information or within a reasonable time thereafter, unless;

(i) The Agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(ii) The designation made by the submitter appears obviously frivolous; except that, in such case, the Agency must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

Subpart E—Exemptions From Disclosure

§ 212.41 Exemptions from publication and disclosure requirements of subparts B, C, and D.

None of the provisions of subparts B, C, and D which provide for publication and disclosure of certain information and records shall be applicable to matters that are:

(a) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(b) Related solely to the internal personnel rules and practices of the Agency;

(c) Specifically exempted from disclosure by statute;

(d) Trade secrets and commercial or financial information obtained from a person and privileged and confidential;

(e) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records or information compiled for law enforcement purposes, but only

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to the extent that the production of such law enforcement records or information:

(1) Would reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedure for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(h) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; and

(i) Geological and geophysical information and data (including maps) concerning wells.

§ 212.42 Exemption from 5 U.S.C. 552.

Whenever a request is made which involves access to records described in paragraph (g) of § 212.41 and the investigation or proceedings involves a possible violation of criminal law; and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Agency may, during only such time as that circumstances continues, treat the records as not subject to the re-

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quirements of 5 U.S.C. 552 and this subpart.

Subpart F—Opening of Records for Nonofficial Research Purposes

§ 212.51 General policy.

(a) The Agency will open its records on an equitable basis to all individuals engaged in private research as soon as such action may be taken without adversely affecting the national security, the maintenance of friendly relations with other nations, the efficient operation of the Agency, or the administrative feasibility of servicing requests for access to such records.

(b) Access for research purposes to the classified foreign policy records in the Agency's custody will be governed by the regulations of the Department of State with respect thereto, as set forth in part 6, chapter II of title II of the Code of Federal Regulations. Application for such access may be made to the Chief, Customer Outreach and Oversight Staff, at the address listed in § 212.33(a) of this part. That officer, or his/her designee, in consultation with the Director, Historical Office, Department of State, or his/her designee, will determine the action to be taken and will so advise the researcher.

PART 213—COLLECTION OF CLAIMS

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